

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TEDDY NICHOLS,	:	CASE NO: 1:02-CV-0045
Plaintiff,	:	Judge Beckwith
-VS-	:	
INDIANA MICHIGAN POWER COMPANY	:	ORDER
RIVER TRANSPORTATION DIVISION	:	
and/or AMERICAN ELECTRIC POWER	:	
FUEL SUPPLY, RIVER TRANSPORTATION	:	
DIVISION,	:	
Defendants.	:	

This matter comes before the Court upon Defendant's Motion for Advisory Jury (Doc. No. 51). Plaintiff has filed a Response to Defendants' Motion for Advisory Jury (Doc. No. 59). The matter is ripe for decision.

The Court is aware that it has discretion to impanel an advisory jury in connection with the trial of any issue pursuant to the provisions of Federal Rule of Civil Procedure 39(c).¹ Having considered Defendants' memorandum in support of their motion, the Court declines to exercise its authority to impanel an advisory jury in this matter. Neither the need for assessment of the credibility of witnesses nor the potential for contradictory expert opinions convinces this Court that a jury

¹Rule 39(c) reads, in pertinent part, as follows:

In actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, ..., the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

of lay persons would aid in the speedy, inexpensive and just determination of this action as contemplated by Federal Rule of Civil Procedure 1.²

The Court need not determine whether Plaintiff alone has the right to demand a jury trial pursuant to the Jones Act, 46 U.S.C. Sec. 688 et seq. Defendants have implicitly conceded that they are not entitled to demand a jury trial at this point in the proceedings and that Plaintiff has withdrawn his demand for a jury trial. Plaintiff has withdrawn his demand for a jury trial in a timely fashion without objection from the Defendants.³ He is the master of his case. Not unlike a Plaintiff's choice of venue, assuming proper jurisdiction in more than one court, his choice of court should be honored. This Court will honor this Plaintiff's choice of trial to the bench.

Defendants' motion for advisory jury is DENIED.

Dated: May 17, 2004

/s/ Sandra S. Beckwith

Sandra S. Beckwith

United States District Judge

²Rule 1 reads, in pertinent part, as follows:

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

³See Plaintiff's Second and Third Amended Complaints (Doc. Nos. 21 and 37).